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8 **UNITED STATES DISTRICT COURT**  
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10 **NORTHERN DISTRICT OF CALIFORNIA**

11 ALBERT WRIGHT JR. and MARVA JOE  
12 GREEN WRIGHT,

13 Plaintiffs,

14 vs.

15 A.W. CHESTERTON COMPANY, INC., et  
16 al.,

17 Defendants.  
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Case No. C-07-5403 (MJJ)

**[PROPOSED] ORDER GRANTING  
MOTION TO REMAND CASE TO  
CALIFORNIA SUPERIOR COURT**

Date: January 29, 2008

Time: 9:30 a.m.

Judge: Hon. Martin J. Jenkins

Courtroom: 11

1 Plaintiffs ALBERT WRIGHT JR. and MARVA JOE GREEN WRIGHT's, Motion To  
2 Remand Case to California Superior Court came on regularly for hearing on January 29, 2008, at  
3 9:30 a.m., in Courtroom 11 of the above-captioned Court, the Honorable Martin Jenkins presiding.  
4 Plaintiffs' and Defendant's counsel of record appeared for oral argument.

5 The Court, relying on *In Re: Hawaii Federal Asbestos Cases*, 960 F.2d 806 (9<sup>th</sup> Cir. 1992),  
6 and *Overly v. Raybestos- Manhattan*, 1996 U.S. Dist. LEXIS 13535 (N.D. Cal. 1996), among  
7 other authority as set forth in plaintiffs' moving papers, and having considered the papers filed and  
8 served herein and the arguments made by counsel, hereby GRANTS Plaintiffs' Motion To  
9 Remand Case to California Superior Court.

10 Plaintiffs have properly alleged state law based failure to warn claims against defendants,  
11 among other causes of action, for which the federal court does not maintain jurisdiction in this  
12 instance. Plaintiffs' objections to the deficient declarations of J. Thomas Schroppe, Ben J.  
13 Lehman, Lawrence Stilwell Betts and Thomas J. Moses are sustained in that said declarations are  
14 overly general and lack the requisite foundation to support the facts which they attempt to assert  
15 and do no meet the minimum standard necessary to support defendant's removal petition. (*See*  
16 *Boyle v. United Tech. Corp.*, 487 U.S. 500, 509, 108 S.Ct. 2510, 2517, 101 L.Ed.2d 442 (1988).)  
17 As any ambiguities and contested issues of fact must be resolved in the Plaintiffs' favor, (*Goss v.*  
18 *Schering-Plough Corp.* 2006 WL 2546494 (E.D.Tex. 2006)), the Court finds that this court lacks  
19 subject matter jurisdiction over this case, and that this case should be remanded to the Superior  
20 Court of the City and County of San Francisco, California.

21 It is therefore ORDERED that on this \_\_\_\_\_ day of \_\_\_\_\_, 2008, the above-  
22 entitled and numbered civil action is hereby REMANDED to the Superior Court of the City and  
23 County of San Francisco, California.

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25 \_\_\_\_\_  
26 Honorable Martin Jenkins  
27 U.S. District Court Judge  
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